

BEFORE THE
Federal Communications Commission

WASHINGTON, D. C.

In the Matter of)
)
Market Entry and Regulation)
of International Common Carriers)
With Foreign Carrier Affiliations)

RM-8355

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: The Commission

REPLY COMMENTS OF IDB COMMUNICATIONS GROUP, INC.

IDB Communications Group, Inc. ("IDB"), by its attorneys, hereby submits these reply comments in response to the "Petition for Rulemaking" [hereinafter "Petition"] filed by AT&T on September 22, 1993 in the above-captioned proceeding. IDB is a global telecommunications company that operates an extensive domestic and international network. With respect to international services, IDB is the largest U.S. international private line ("IPL") carrier and the fourth largest U.S. provider of international message telephone service ("IMTS"). Consequently, IDB has a strong interest in the Commission's regulation of U.S. international carriers.

At the outset, it must be noted that AT&T's proposed regulations and policies would not apply to IDB. AT&T's proposal would apply when a foreign carrier owns five percent or more of a U.S. carrier. From December, 1992 through October, 1993, TeleColumbus USA, Inc. ("TC-USA"), a wholly-owned subsidiary of a Switzerland company, owned a minority interest in IDB that exceeded five percent. However, TC-USA is not a "carrier" as defined by the Commission. Further, TC-USA has nearly completed the sale of its entire position in IDB, and now owns less than

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five percent of IDB. No other foreign entity, whether a carrier or otherwise, owns more than one percent of IDB.

At the same time that IDB is shedding its foreign ownership, IDB is increasing its ownership of certain foreign carriers.¹ AT&T's proposal, by its terms, would not apply to U.S. carriers which hold an ownership interest in foreign carriers.² Increased scrutiny of U.S. ownership of foreign carriers would inhibit the ability of U.S. carriers to compete overseas, and would affect AT&T, which itself holds substantial interests in several foreign carriers. However, while IDB does not have a direct stake in the outcome of AT&T's proposals, IDB is filing these reply comments because it firmly believes that AT&T's proposed policies are contrary to the U.S. public interest. Therefore, IDB fully supports those parties which have opposed the Petition.

The Commission must distinguish AT&T's self-interest from the U.S. public interest. AT&T's Petition is part of an increasingly aggressive pattern on the part of AT&T to erect regulatory barriers to competition from new and innovative services and service providers. Recent AT&T regulatory actions designed to protect its own entrenched monopoly position in international services include, among other things:

¹ IDB currently owns 40% of the capital stock of TC WorldCom AG, the parent company of WorldCom International, Inc. in the United Kingdom and WorldCom GmbH in Germany. IDB has signed a letter of intent to acquire 100% of the capital stock of TC WorldCom AG and expects to consummate the acquisition shortly.

² See AT&T's proposed rules xx.01 and xx.02.

- ° AT&T's petition for reconsideration in CC Docket No. 90-337, Phase II, asking that the Commission prohibit end users from interconnecting IPLs to the U.S. switched network at a carrier's central office;
- ° AT&T's opposition to all Section 214 applications to engage in IPL resale between the U.S. and foreign countries;
- ° AT&T's continued opposition to all Section 214 applications to engage in IPL resale between the U.S. and Canada, despite the Commission's determination that Canada offers "equivalent" resale opportunities;
- ° AT&T's filing of informal and formal complaints alleging that U.S. and foreign carriers are in violation of the FCC's IPL resale policy;
- ° AT&T's effort to block or substantially delay new entry into the U.S. market by opposing the Section 214 applications of foreign-affiliated carriers;
- ° AT&T's opposition to virtually all applications by foreign-owned carriers to be reclassified as non-dominant carriers; and
- ° AT&T's filing of petitions, informal complaints, and formal complaints against international "call back" service providers.

The Petition should be added to this list. The true purpose of the Petition is not to promote the interests of U.S. consumers or improve the FCC's administration of its international policies, but to insulate the U.S. market, which AT&T dominates, from entry by foreign carriers, and to hinder U.S. carriers in their ability to obtain financing from foreign carriers and to expand in foreign markets.

The Petition should be rejected because, as numerous commenting parties have noted,³ it does not raise a single new substantive issue. The FCC has recently addressed (and in many cases rejected) AT&T's policy proposals in CC Docket No. 91-360, CC Docket No. 90-337, and other proceedings. AT&T's Petition simply reiterates arguments it has raised in numerous previous comments and petitions for reconsideration. Nor has AT&T pointed to a single instance where a foreign carrier has caused harm to the U.S. market or consumers, either by evading Commission policies or otherwise. The only identifiable harm that has occurred is attributable to AT&T. Its obstructionist actions have erected de facto entry barriers by causing substantial delay and massive uncertainty regarding entry or expansion by potential competitors in the U.S. market.

While IDB agrees with AT&T that the Commission must carefully monitor the involvement of foreign carriers in the U.S. market, the Commission has taken that job seriously and applied its policies vigorously on a case-by-case basis. The Commission's decision to impose substantial conditions upon Telefonica's acquisition of a majority interest in TLD is one example of the Commission's prudent application of its policies on a case-by-case basis to ensure that foreign entry into the market promotes rather than undermines U.S. competition and consumer welfare.

The Petition suggests that existing policies are flawed because the Commission must apply them on a case-by-case basis in

³ E.g., Comments of Cable and Wireless, Inc. at 2; Comments of MCI Telecommunications Corp. at 3.

various procedural settings. Like other commenting parties, IDB believes that this is a strength rather than a weakness.⁴ In any event, as ACC Global points out, it is flatly wrong for AT&T to suggest that its proposed rules and policies would obviate the Commission's application of its policies on a flexible, case-by-case basis.⁵ Indeed, as an overlay on top of the Commission's existing policies, AT&T's proposed rules would complicate rather than simplify the entire process. AT&T's assertion that its proposal would unify the Commission's international regulatory regime is a transparent pretext for replacing the Commission's traditional pro-competition policies with a new protectionist regime.

IDB believes that the single most successful U.S. telecommunications policy in recent memory has been the policy of promoting the maximum feasible competition in the United States and abroad. While the benefits of this policy have been recited so often by so many that they may sound like a broken record, these benefits are quite real and will continue to accelerate in the coming years. Competition ensures, among other things, lower prices, better and more diverse service offerings, technological innovation, and market-driven infrastructure development. The beneficiaries are U.S. consumers, and U.S. businesses who are competing in domestic and global markets. The Commission should

⁴ E.g., Comments of ACC Global Corp. at 2-3; Cable and Wireless, Inc. at 14-15.

⁵ E.g., Comments of ACC Global Corp. at 2.

not be blinded by AT&T's rhetoric to the fundamentally anti-competitive nature of AT&T's proposals.

The Commission should presumptively reject any policy proposals that would impose limitations upon consumers or restrict the ability of carriers to provide services in response to market demand. Such proposals impose obvious hardships upon U.S. consumers by interfering with the free interplay of market forces. Proponents of such policies should be required to prove by hard data that market imperfections exist which require restrictions upon competition in order to promote consumer welfare. All too often, as is the case here, proponents of restrictive policies seek to limit competition to protect their own entrenched market position. Unless and until AT&T provides concrete data that foreign carriers have undermined competition and consumer welfare (and AT&T has submitted no such data to date), the Commission should err on the side of promoting competition and dismiss the Petition.

Like other commenting parties, IDB is concerned that any movement to close the U.S. market to foreign carriers will redound to the detriment of U.S. carriers seeking to enter foreign markets. It is a problematic undertaking for the U.S. Government to use its own regulatory policies as a means of imposing pressure upon foreign countries to make their markets more open to U.S. carriers. With few exceptions, the countries which have liberalized their markets (e.g., the U.K., New Zealand, Australia and Sweden) have done so on their own accord, after evaluating the success of a competitive telecommunications environment in the

United States. Few, if any, countries have increased the openness of their markets in response to the regulatory pressures exerted by another country. The U.S. should continue to lead by example and promote competition whenever possible. If the U.S. were to erect entry barriers or impose service and facility restrictions at this point in time, the effect could well be to roll back the clock by encouraging other countries to do the same.

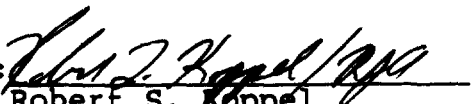
Finally, AT&T knows full well that its proposed restrictions upon foreign carriers would harm U.S. carriers by denying them access to foreign capital. AT&T, which will earn approximately \$4 billion in 1993, does not require outside financing to expand its network and service offerings. By contrast, most, if not all, of AT&T's competitors must reach out to other sources of capital and foreign telecommunications entities have been a crucial source of such capital. In IDB's view, AT&T selected a five percent threshold for its proposed rules not because such a threshold protects U.S. interests, but because such a threshold effectively deprives AT&T's competitors of the opportunity to obtain sufficient investment capital from foreign carriers.

For the foregoing reasons, IDB submits that the Petition
should be dismissed.

Respectfully submitted,

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November 16, 1993

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CERTIFICATE OF SERVICE

I, Danita Boonchaisri, hereby certify that I have caused a copy of the foregoing "Reply Comments of IDB Communications Group, Inc." to be served on this 16th day of November, 1993, by U.S. mail, first class postage prepaid, upon the following:

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